EDITOR'S NOTE

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Supreme Court, U.S.
FILED
FEB 8 1994
OFFICE OF THE CLERK

No. 93- 7657
No.-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1993

DAVID LAWSON,

Petitioner,

v.

GARY DIXON, Warden, Central Prison,
Raleigh, North Carolina,

Respondent.

APPENDIX TO
RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

INDEX

A. Motion and Order for a Competency Evaluation for David Lawson.

B. Affidavit from David Lawson on his desire not to present mitigating evidence dated June 6, 1981.

C. Competency Evaluation Summary on the testing conducted at the Dorothea Dix Hospital on David Lawson dated February 4, 1981.

D. Portions of the testimony of James C. Johnson, Jr. at the May 26, 1987 State Motion for Appropriate Relief Hearing,including a transcription of a taped conversation between Mr. Johnson and Lawson which occurred prior to the May, 1981 trial of this matter.

E. Portions of the trial transcript containing the sentencing instructions given at the trial of this matter on June 6, 1981.

F. The verdict form used during the sentencing hearing in State v. Lawson on June 6, 1981.

APPENDIX A

A-1

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

CABARRUS COUNTY

1981 JAN 27 PM 3 [illegible]

SUPERIOR COURT DIVISION
80 CR 18307

CABARRUS COUNTY, C.S.C.

BY [illegible]

State of North Carolina)
)
VS.)
)
David Lawson,)
Defendant)

MOTION FOR MENTAL EVALUATION

NOW COMES the Defendant's Court Appointed Attorney, James C. Johnson, Jr., and respectfully moves the Court for an Order pursuant to G.S. 15 A 1002 (b) 2 for a psychological evaluation of the Defendant in order that a determination be made as to whether or not he is mentally competent to proceed to trial.

1. That this petition is made based on the fact that the Defendant has developed difficulty in his ability to communicate with his attorney, is suffering depression, lapse of memory, anxiety and a general lack of ability to understand the nature and seriousness of the charges against him.

WHEREFORE, the Defendant through his attorney respectfully moves the Court for an Order granting a psychological evaluation of the Defendant at the Dorothea Dix Hospital pursuant to G.S. 15 A 1002 (b) 2.

This, the 27th day of January, 1981.

James C. Johnson

James C. Johnson, Jr.
Attorney for Defendant

David Lawson

David Lawson
Defendant

JOHNSON, BELO & PLUMMER
ATTORNEYS AT LAW
CONCORD, N. C.

A-2

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

CABARRUS COUNTY

1981 JAN 29 PM 2

SUPERIOR COURT DIVISION
80 CR 18307

CABARRUS COUNTY, C.S.C.

BY [illegible]

State of North Carolina)
)
VS.)
)
David Lawson,)
Defendant)

ORDER FOR MENTAL EVALUATION

THE COURT having been presented a Motion seeking a mental evaluation study to be conducted on the Defendant to determine his capacity to stand trial by the petitioner, defense attorney, and the Court having considered the Motion and evidence, makes the following finding of facts:

FINDINGS OF FACTS

1. That the Defendant is presently charged with the criminal offense of murder.

2. That the Court has not set a bond for the Defendant.

3. That the Defendant is 25 years of age and is a resident of Cabarrus County.

4. That the petitioner, Defendant's attorney, has consulted with the Defendant and found the Defendant to be in such a mental state that the Defendant cannot adequately assist defense counsel with the preparation of the Defendant's defense.

5. That the Defendant has exhibited the following characteristics in conduct: inability to communicate with his attorney, depression, lapse of memory, anxiety, and a general lack of ability to understand the nature and seriousness of the charges against him.

6. That the Court further finds as a fact that the foregoing conduct on the part of the Defendant raises serious questions as to his present mental capability to advise his attorney and to stand trial and that a mental evaluation study should be made on the Defendant to determine his capacity to stand trial.

7. That the Court finds that a mental examination pursuant to G.S. 15A-1002 (b) (2) (committment to state mental hospital for sixty days) is required and in the best interest of the Defendant.

JOHNSON, BELO & PLUMMER
ATTORNEYS AT LAW
CONCORD, N. C.

CONCLUSION OF LAW

The Court concludes as a matter of law that it has jurisdiction of the subject matter, Defendant and has the authority under the provisions of Chapter 15, Article 56 of the General Statutes to enter the within Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED

1. That the Defendant is to be given a mental examination to determine his capacity to proceed to trial and assist his attorney in the preparation of the defense of the Defendant.

2. That said mental examination shall be conducted under the provisions of::

(a) G.S. 15A-1002 (b) (2) and that the Defendant shall be committed to Dorothea Dix Hospital in Raleigh, North Carolina, a state mental hospital for a period not to exceed sixty (60) days. That the Sheriff of Cabarrus County, North Carolina, shall transport the Defendant to and from said facility. That the superintendent of said institution shall notify the Clerk of this Court as to the Defendant's condition and the Defendant's release date back to the Sheriff.

3. That the Defendant is to be in the custody of the Sheriff of Cabarrus County pending the examination hereinabove ordered except as may be required for the Defendant to be in the custody of the medical expert or the State hospital.

4. That a copy of the findings of the hospital shall be placed in the Defendant's file and a copy shall be made available to the Defendant's attorney.

5. That this matter is retained for such other and further orders as may be required.

This, the 29th day of January, 1981.

Adam C. Grant, Jr.
JUDGE PRESIDING

JOHNSON, RELO & PLUMMER
ATTORNEYS AT LAW
CONCORD, N. C.

APPENDIX B

6/14/81 2:30 P.M.

B-1

I, David Lawson, acknowledge that I am on trial for the murder of Wayne Shinn and the shooting of his father Buren Shinn, along with the breaking and entering of Wayne Shinn's home on Dec. 4, 1980.

I realize that the State of North Carolina is seeking the death penalty.

I have spoke with my attorney James C. Johnson, Jr. on at least five separate occasions and told him that should I be found guilty, then in the second trial dealing with punishment I wish to have my attorney seek and request the death penalty.

I do not wish to spend the rest of my life in jail. I had rather have the death penalty than a life term.

I understand my right to a second trial in which the jury would consider both mitigating and aggravating circumstances.

I have never the less for some months before the trial told my attorney I do not want a life sentence but a death sentence and that I want him to take such legal steps as may be necessary to see the sentence is carried out.

This 6 June, 1981.

David Lawson
David Lawson

Sworn to and subscribed
before me this the 6th
day of June, 1981.

James C. Davis
~~Deputy Clerk~~ Judge of Superior Court

APPENDIX C

NORTH CAROLINA DIVISION OF
MENTAL HEALTH, MENTAL RETARDATION
AND SUBSTANCE ABUSE SERVICES

Dorothea Dix Hospital
Raleigh, N. C.

DDH SPR FOR

38-38-27 LAWSON, DAVID
NONE WMS COO 01-29-81
06-22-55 CABARRUS

Court File No. 80-CR-18307

PSYCHIATRIC HISTORY AND EVALUATION
AND DISCHARGE SUMMARY/AFTERCARE PLAN

SENSITIVE INFORMATION
When Requested By Consumer Must Be
Shown AND/OR Interpreted by A
Competent Clinician.
Redisclosure Prohibited By Law Without
Client Consent

Date of Admission: 01-29-81

Date of Conference: 02-03-81

Date of Discharge: 02-05-81

Correspondent: Coyle Scarborough, Father

IDENTIFYING DATA: This 25 year old, white, single male from Concord, North Carolina was admitted to the hospital as per court order of the Superior Court Division of Cabarrus County for evaluation of capacity to proceed on charges of murder.

IDENTIFICATION OF DATA BASIC TO OPINIONS: The opinions expressed in this report are based upon interviews with the patient, the result of physical examination, laboratory studies, psychological tests, and observation of his ward behavior during the time that he was in the hospital.

MENTAL STATUS ON ADMISSION: At the time of his admission to the hospital Mr. Lawson was alert and cooperative. His stream of mental activity was normal. He denied hallucinations and delusions. He reported previous suicidal thoughts and one attempt but denied any suicidal intent at the time of admission. His memory, judgment and intellect all appeared to be within average limits.

PHYSICAL EXAMINATION: Within normal limits.

LABORATORY DATA: Within normal limits.

PSYCHOLOGICAL TESTS: On IQ test Mr. Lawson scored 107. His reading grade level was at a ninth grade level or above. Mr. Lawson's Bender Gestalt figures do not suggest serious organicity. His projective drawings suggest significant psychopathology including a low self-esteem with feelings of inferiority, insecurity and inadequacy. Mr. Lawson's MMPI profile suggest anxiety, depression and nervousness in a patient who is likely to accentuate his complaints by a tendency to be self-dramatic. He may be expected to be chronically hostile and resentful and to use projection and acting out as preferred defense mechanisms. Impulse control is likely to be deficient. Expression of hostility and depression often form a cyclic pattern. Such patients are typically self-centered and dependent with an exaggerated need for affection.

HOSPITAL COURSE: During his stay in the hospital Mr. Lawson was cooperative with hospital routine and the evaluation procedure. He did not present any management problems. He did not require any medication.

PSYCHIATRIC OPINIONS: Mr. Law is capable of proceeding to trial at the present time. He understands the charges against him, the seriousness of those charges and is capable of working with an attorney in the preparation of his defense.

MEDICAL DIAGNOSIS: None

NORTH CAROLINA DIVISION OF
MENTAL HEALTH, MENTAL RETARDATION
AND SUBSTANCE ABUSE SERVICES

LAWSON, DAVID
38-38-27

Dorothea Dix Hospital
Raleigh, N. C.

PSYCHIATRIC HISTORY AND EVALUATION
AND DISCHARGE SUMMARY/AFTERCARE PLAN
Page 2 -- 02-03-81

PSYCHIATRIC DIAGNOSES: Axis I: 309.00 Adjustment disorder with depressed mood.

Axis II: V71.09 No diagnosis.

DISCHARGE MEDICATIONS: None

RECOMMENDATIONS: That Mr. David Lawson be discharged to the custody of the sheriff of Cabarrus County as capable of proceeding to trial.

James Groce, M.D.
Forensic Psychiatrist
Forensic Unit

JG avb
2-4-81

cc: Defense Attorney
District Attorney
Presiding Judge
Mental Health Center
Patient

SENSITIVE INFORMATION
When Requested By Consumer Must Be
Shown AND/OR Interpreted by A
Competent Clinician.
Redisclosure Prohibited By Law Without
Client Consent

APPENDIX D

THE COURT: I understand it's a lot of stuff.

MS. BYERS: But we can get that xeroxed within a day of the hearing being over and get it back to you. It's just a matter of having access to the--we did not get access of this until a little while ago.

THE COURT: Okay. I was going to suggest the use of the record of the case on appeal, but that wouldn't be in line with what your motion is about. Is that right?

MR. KING: That's right.

THE COURT: Are you ready to make your opening statement? Do you propose to make one?

MR. KING: We would waive an opening statement, Your Honor.

THE COURT: Call your first witness then.

MR. KING: Call Mr. Johnson to the stand, please.

THE COURT: Now, I want to say this. I recognize that the Senator is the first witness, and I'm going to, so you'll all know to start with, I'm going to overrule any objections based on his being taken out of turn, so to speak. I'm not going to require him to wait around and be in turn. Ask everybody's cooperation on that. Any question about this, that ruling? All right.

JAMES C. JOHNSON, JR., being first duly sworn, testified as follows during DIRECT EXAMINATION BY MR. HARKINS:

Q State your name and business address for the record, please

PEACOCK CO. ATLANTIC, N.J. 07402 FORM 748

Q Mr. Johnson, on Page 571, where the State objected to a couple of questions, what were you trying to get in?

MR. ROBERTS: Well, objection, Your Honor.

THE COURT: I have no idea. What do you mean here?

MR. HARKINS: I'm trying to ascertain, Your Honor, what evidence he was trying to get before the jury.

THE COURT: You want him to read the questions that were objected to? Is that it?

MR. HARKINS: Yes, Line 18.

A All right, the question was: "And other than being one of the rowdy, good old boys, did he ever give you any trouble?" Mr. Bowers said, "The State objects." The Court sustains. Question: "Had you ever had any trouble with--" Mr. Bowers, "Objection." It's sustained. "Mr. Tucker, when he came to you, were you at work at the time?" That was when he showed up.

Q What were you trying to get before the jury on the two questions where the State objected?

A Just the fact that he had no criminal record here as far as Mr. Tucker would know.

Q Were you also trying to get in any information concerning the fact he had a good employment history?

A I really can't remember. That was part of it. I was using Tucker at that point to try to show that at least as far as he was concerned and conveyed knowledge with the Kannapolis P.D.,

that he had--that David had no criminal record.

Q Mr. Lawson had worked with Mr. Tucker at Kmart, hadn't he?

A That's my understanding.

Q Had you talked with Officer Tucker concerning David's work record at Kmart?

A To the degree that he worked there. He worked in the lawn and flower department, fertilizer department, whatever, like that, and that he was an average employee. There was nothing outstanding about that, though to my best recollection, Tucker was aware of the problems David had had in Stanly County.

Q Did you ever ask Tucker if he had ever had any problems with David of a disciplinary or other nature?

MR. ROBERTS: Your Honor, the State objects. Certainly that would not be admissible had the question been asked.

THE COURT: I don't really understand what the reason you're--what are you attempting? Which of your contentions in your motion for appropriate relief are you offering this on?

MR. HARKINS: This deals with Mr. Johnson's presentation of mitigating evidence favorable to Mr. Lawson at the trial.

THE COURT: And is it your contention that this was admissible at the trial court and the judge erred when he sustained the objection?

MR. HARKINS: No. I'm merely--

THE COURT: Is that what you--

MR. HARKINS: I'm merely trying to determine what

investi tion Mr. Johnson had conce ning this particular point and whether--

THE COURT: You didn't ask him that, did you?

MR. HAPKINS: I believe I did, Your Honor.

THE COURT: Didn't sound to me like you did, but go ahea I thought you were asking him about this transcript. Go ahead.

Q. Did you ask Mr. Tucker if Mr. Lawson had given him any problems as an employee?

A. I'm trying to call from my recollection. I asked how he had gotten along, and it was something to the effect of never having had any problems with him, or something to that effect, and he indicated he hadn't worked there that long.

Q. But you were not aware of anything unfavorable from Mr. Tucker concerning Mr. Lawson's employment at Kmart?

A. As to his employment at Kmart, no.

Q. And is that what you were trying to bring out when the State objected?

A. Not at that point. I was trying to negate any possibility of a criminal record.

Q. Prior to the trial, did you investigate David's family back ground?

A. I discussed with David at some length on more than one occasion his background. He indicated to me that he was not in close contact with relatives -- his mother and his father. Last week when you and I were discussing it, I told you I

couldn't recall right offhand whether or not David's father was dead or not. In trying to review some of this, I know that we used him as a reference on the hearing for competency and that there was some other testimony about it, but he had not, he told me--whether it's right or wrong--he told me he had not been in close proximity or relationship with his parents and I believe he used the figure five years, maybe seven years, that he hadn't had any contact, and he was upset in the sense of irritated when one of the local newspapers had contacte his mother, and he specifically told me he didn't want his people brought into this, he didn't want them bothered with it, and he had called her or she had called him. I don't recall exactly which way it went. But called to tell her that they didn't have anything on him, not to worry about it. He didn't want them brought into this because this was his situation, his problems, and he didn't want them drug into it. Now, but as to any other relatives, I can't recall him mentioning any aunts or uncles or anything of that nature as to any type of contact.

Q. Did you undertake any background search of Mr. Lawson other than what he told you?

A. I thought that was the best source I could go to, was what he told me and his attitude toward that situation. David expressed the fact that his mother had brought him up. He didn't seem to want to get into any great discussion as to his

personal relationship with his father or his mother other than the fact that he had kept his distance for a number of years, and they had, too. The other fact was that for a short period of time, he had been with a teenage group--some people might call it gangs--anyway, he and some others had been breaking into a dormitory and they got caught. He was sent for some period of time--I think he said several months, less than six, I believe. I'm just recalling off the top of my head. Sent to a camp for boys, and that he enjoyed that camp. He fished, and they let him do pretty much what he wanted to do, and he recalled that and enjoyed that experience, but that he early on decided he wanted to be on his own. That he enjoyed that. That he felt secure in that. That he did not like to have close ties with anyone, for one of several reasons. First of all, if he did anything that was inappropriate, illegal, he could rely on himself and he trusted himself and he certainly didn't trust--didn't want to rely and trust somebody else--and that he liked the fact that he was independent, that he wanted to be independent. He was proud of himself as being independent, and that he had the ability to get along in life and handle things. He expressed that very strongly, and those were the attributes--and, of course, we discussed many facets of his life, which goes into other matters, you know, what--necessarily favorable to him in this situation.

Q Did you seek to determine his medical history?

A I asked him about his general health, and he indicated to me that it was good. He worked at a sawmill a great deal. He said that was some of the hardest work he'd ever done, and he on one or two occasions discussed the fact that it took a real man to do that, and I concurred with him. That's hard, laborious work, and that was his physical side. As to his mental side, he never indicated to me that he thought he had any type of emotional or mental problem, and I formed the opinion over a period of time in talking with David that he is highly intellectual. He is not a formally educated person, but he is certainly a very sharp person. He's well read in the sense that he picks up on things, notices things, reads the newspapers, reads books. He has that kind of interest. And he had a perception of history in depth, and I thought then and I think you and I discussed last week and you and I agreed on this, that he is a very keen, intellectual person, although he is not formally educated.

Q Did you perform any investigation into any drug use in his past?

A David told me that he didn't use that stuff because that wasn't the smart way to go. That only the dummies use that. That he was smart enough to avoid that because that was a dead-end road. He also had a philosophy about gambling. That was a dead-end road, too. Only suckers gambled. And he said he didn't get into the use of drugs or things like that because

that would really mess you up. He's seen a lot of people who--one time, I think, he used loggerheads or waterheads that got into that stuff.

Q Other than questioning David, did you perform any additional independent investigation into his family background or his medical background?

A I went to Stanly County and talked to some law enforcement officers down there about David to try to get some background information, which they gave me, both about his personal and other aspects of his life, and they were consistent with what he had told me. There wasn't really a great deal of information to obtain. David was always--my investigation indicated that David had lived a very private life. He's a very private individual. He likes his own space. He doesn't like to be confined, but he likes his own private space, and he's not one of these that had developed a lot of personal inter-relationships. To the best of my recollection, I believe that the Court ordered that he receive a psychiatric evaluation at Dorothea Dix Hospital, and he did.

Q Did you move that any psychiatric evaluation be performed at any place other than Dorothea Dix Hospital?

A No, I did not.

Q Did you seek to in any way have him evaluated than at Dorothea Dix?

A No, I did not.

Q Did you--were you able to talk to any members of his family?

A I can't recall. I don't know whether I talked to his mother or father one time or not. It seems familiar to me, but I can't--I just really can't say. I'm not saying I didn't. Seems like we discussed one time something I was trying to find out, whether the actual status was divorced or not. I just don't recall. I don't recall if that was before or after the trial. It was before.

Q Did you talk to any of David's friends or co-workers here in Cabarrus County prior to trial?

A When I made the tour of the bars, I talked to some of the people that he was--what you might say acquainted with--people who knew David, people who had an acquaintance with him or he was around, to get a feel of what this man was like. Who did I have here? What was going on? And withouut letting them know I was his lawyer. "What do you think about him?" Or "What do you know about this Lawson fellow?" "Oh, well, he comes in here. Somewhat of a loner. Somewhat of a bragger. He's on his own. Man, he'll hit a lick," like men steal or rob something. He had a reputation of being a fence, more or less handling hot goods, hearsay kind of thing. There was some knowledge that he and Phyllis had some kind of relationship going, but those were the general things I picked up from the conversation of people that I discussed this with.

Q Other than David himself and the Stanly County law enforcement officers and people you may have happened to meet in the bars you frequented, was there anyone else you talked to about David's background prior to trial to assist you in your preparation?

A Other than him--I can't think right now. I can't think of anyone.

Q Did you seek to obtain any records from this adolescent confinement that you referred to that he may have had?

A No, I didn't.

Q Do you know what state that occurred in?

A I can't recall right here.

Q I believe David expressed to you a desire, if he was convicted, that he receive a death penalty. Is that correct?

A That's correct.

Q That was a matter of concern to you and Mr. Plummer?

A Obviously.

Q Did David's desire to die in any way affect your pretrial investigation of his background?

A No. Why should it?

Q I'm asking you if it did.

A No. Obviously not.

Q Is there anyone else you would have talked to in preparation for the hearing but for his desire to die?

MR. ROBERTS: Objection, Your Honor.

THE COURT: Sustained. He just said it didn't interfere with it. If you have some reason to think that's wrong--is that the reason you asked that question? It's kind of unusual.

MR. HARKINS: No, Your Honor.

THE COURT: Go ahead.

Q After Mr. Lawson indicated to you that he desired the death penalty, did that prompt you to seek any additional psychiatric evaluation of him?

A No. And there were a couple of reasons for that. As strange as it may seem, I respect that. He's a unique individua He's a very discerning person. He can be a very deceptive person. He, I would say, is one of the truest men I have ever represented in a criminal defense. He has the innate ability to have a sixth sense. In our conversations--and we had a lot of good ones--in our conversations, my respect for him as to his mental capacity, his educational capacity grew. He was the type of person you could talk with on a genuine, intellectual basis. We had interesting discussions about reincarnation. That's not necessarily weird and unpopular. There's a lot to that. Duke has been doing a lot of research on that. Extrasensory perception. David believed he had been here before. We discussed that. "If this goes to sentencing and everything and I get put to death, I'll be back to see you." We joked about that. He has the ability to perceive what kind

of reaction he wants out of somebody else. He reads people well. When he started into this discussion about why he wanted to be put to death, you could tell that this was a man who had not just suddenly come up with this far-fetched idea. He talked about how he had thought about it, how he had considered it. He talked about the fact that the qualitative value of life to him is extremely important. We talked about Kathleen Quinlan, when her parents were trying to get the respirator and everything off. He told me, he said, "Jim, quality of life is far more important than quantity of life." He told me he liked to have money. He liked to be thought of sort of on the top rung. He liked the ladies. He liked the good life. And if he could not have that qualitative value in his own life, he was no good to anybody, in particular to himself. We discussed this on a philosophical basis on any number of occasions. I wanted to make sure that he clearly was telling me what he honestly felt, and there was no question in my mind, as many times as we went over that, as we discussed the philosophy, discussed religion and how that relates to it--you know, maybe some people may think that's an abnormal request and desire. David, to me, had that thought through in such a complete and philosophical way, he knew what he was saying and doing. He was convinced of his beliefs.

Q Did you ask him if he would submit to the psychiatric evaluation concerning that matter?

A We discussed when he went down--

Q Excuse me. Went down where?

A To have the psychiatric evaluation by the State through the motion filed. He asked me the question, "Do you think"--if I recall correctly. I can't remember. "Do you think I'm crazy?" I said, "No, I don't think you're crazy. I just wanted to make sure we get some kind of help if there is any problem there." And we went through what he might expect, you know, take him down, be intereviewed, and this kind of stuff. I was concerned about the fact that if they got to probing too deeply about what happened and what did or did not occur, what he might say, that could come back to haunt him in court. I told him the consequences of that. There was always that outside possibility that whatever you confide to those people, they could come back into court, even though we're trying to get a medical profile on him through the State, and he understood that, and he said he knew how to handle that. And so when he came back, I read the report. I believe Dr. Grose did that report. And they had some forms sent back, more like a tax form than anything else, and I sat down and went over it with him, and he very quickly pointed out that he handle himself well while he was down there and didn't say or do anything which would have jeopardized his standing in the case, and that he understood, and that he had tried to make a good impression and say only what he felt was reasonably necessary,

and so I realized that his mental processes were sharp enough and cool enough to keep the lid on anything that might damage him. And they said he was sometimes reactive and sometimes that he had a propensity to not be able to control himself. One of the things I remember there was some big guy back in the jail here, made an excellent fellow back there and down in his interviews, made excellent appearances. He never gave any trouble. One or two of these fellows, he wanted to, I think, cram them down the commode, because they were giving some static. He knew it would be in his best interest to keep a cool, low profile, so David understood that when he was in a position of control and power, he would do whatever he wanted to do, but when he was in a situation where he had to give the best impression or put his best foot forward, he knew how to handle that, too. You didn't have to go and educate him on that. His mental processes and his practice of reason and logic, I can truthfully say, he was one of the best I have ever represented.

Q You don't have any formal training in psychiatry, do you?

A I have a minor in sociology and psychology which I gained in college at Tennessee. That was my secondary minor.

Q Did you request him to have another evaluation after he made known to you his desire to receive the death penalty?

A No.

Q Did you seek to move the Court for an order having such an

evaluation?

A No, because we knew exactly where we were.

Q Did you not feel that despite your personal beliefs in the matter, an expert opinion might be useful?

MR. ROBERTS: Objection.

THE COURT: Well, overruled.

A No, I didn't then, and I don't now, because again, I come back to the thing, just like you told me last week you thought he was highly intellectual, and one of the smartest men you had ever dealt with, and I felt the same way you do. I felt it then and I feel it now. David is a very competent person. He's not an emotional con artist or something like that. He is extremely proud of the ability he possesses. We discussed in great detail the process of committing crimes and not getting caught, his professional--like any other boys. As I said to you last week, with David's capabilities, he would have been a very successful businessman, but he chose another route, and he was good at the route he chose.

Q Now, at the penalty phase, Mr. Lawson took the stand and expressed to the jury his desire to receive the death penalty. Is that correct?

A That is correct.

Q Did you present any other mitigating evidence to the jury?

A The only mitigating evidence that flowed was through the whole trial of the various aspects of what I related to you a

few momen[illegible] ago. It came out he had [illegible]o major criminal record, D-16
that and these things here, but as to say call separate individual witnesses to produce those, not at the sentencing stage. I don't know how many cases you've ever tried. I've been at this a long time. I've tried a lot of murder cases. I've had some toughies. But when a man asks to be put to death, as in this case, and he knew and I knew what we were doing, what he wanted to do, I had satisfied myself beyond a reasonable doubt that he had all of his faculties. He had thought this thing through, and he knew where he was going. When he got up and he quite literally stripped every mitigating factor that you could offer, because, you know, when a man doesn't want to save his own life, that puts you with a heavy burden to try to convince the jury over here that he's wrong, and that he shouldn't, though I tried that and I discussed that with him. I discussed it with him at some length. I said, "If you're asking to be put to death, how am I going to argue to the jury? He laughed about it, said, "You have a tough job." I said, "Yes, I sure do." The mitigating circumstances which the jury heard through the course of the trial, whatever they were, were the ones they could take in the sentencing stage, but wherever I went to find mitigation other than what you're trying to indicate here about he had a good work record, something like that, everywhere I went, I couldn't find anybod to say something that was mitigating, and I think that what's

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in the transcript, in the case file. Ms. Soden said in cross-examination with her that he was good to the babysitter, was in a sense domesticated. He wasn't Big, Bad Leroy Brown. When he found out she brought that other man home over there, he could have raised immortal hell, I argued to the jury, but he walked out with his tail between his legs, trying to counter the attitude that he was big and bad and always did mean kinds of things, but the point I'm getting at is he left very little, by his statement, to come around and mitigate, and everywhere I tried to find somebody, it wasn't mitigation.

Q. On cross-examination, had you tried to use some of these bar people up there?

A. To say what? You know, he doesn't drink too much, doesn't fight too much. Hell, he only hit that guy with a pistol one time. Gee, that's great. He could have hit him twice, but he didn't. Didn't have a lot of places to run.

Q. But you did not call any other witnesses?

A. No.

MR. ROBERTS: Objection. Repetitious.

THE COURT: Sustained.

Q. As trial counsel, did you view it as your decision as to what witnesses to call?

A. It's my ship to run.

Q. He did not prevent you from calling any other witnesses, did he?

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at least, until we have a chance for appellate review of this ruling.

THE COURT: Anything else now before the Court makes its ruling? The motion of the defendant that the examination of the principal witness, Attorney Johnson, be conducted in camera is denied. Go ahead.

Q Senator Johnson, after the probable cause hearing in this case, did you speak further with David Lawson concerning his version of what had happened in this crime?

A It's here somewhere. David--I gave him a tape initially for him to give me a feel right off the bat of what he said transpired. I read that with a great deal of interest, and then we compared that with notes that we took down at the hearing. After that, I went in and we were in this room here next to the medical center in the jail. We sat down there and I said, "Look, from a legal standpoint, I don't care whether you did this or you didn't do it, but I've got to know the truth, because if you tell me you didn't do it, then I'm going to proceed with a certain avenue of approach and tactics; if you tell me you did do it, I proceed on another avenue and approach and tactics." And I believe, if I recall correctly, it's sort of like the middle of a battle, don't come up and tell me we're out of ammunition. And I may have done it. I said, "I don't want to feel you pulling on my coat sleeve and telling me this or that. I need to know now. I need to know the truth.

At that point, he said, "All right. Let me tell you what came down." We discussed then on several occasions how he had received information, if I recall correctly, from Phyllis and that the rumor was that the Shinns were wealthy and had money and that they had things in their home of value, and that he had ridden by there on several occasions and just sort of cased the thing out, and in some fashion, either through that process or some other, he had arrived at the realization that they left home in the mornings and that there wasn't anybody around there supposedly during the day, regular daylight time. That he was low on money and he decided to make a lick. A lick means, in his terminology, to break in a place and rob somebody. He then went into great detail to describe how he had driven over there, and I believe he passed the place the first time just to peruse it one time and then came back up the road and pulled in. He had bought a crowbar, if I recall correctly, from Sear's. It was a new crowbar. He went into some detail various times--this was a combination of several conversations, Judge, over a period of time. I'm compiling them all to give you a picture of why I started approaching the case like I did. And that he knew burglar alarms--and I'm convinced he did. He's a sharp man. He knew how some of them went off by a result of even cutting the wires that supplied the power. Some of them were--he discussed one type of burglar alarm that I believe he said was powered by

some type of batteries and various other ways, and he was very familiar with that, and when he went up to the door and busted it open, he was aware that there was a burglar alarm system there but he bypassed it somehow, and it did not go off, and he was--he felt good about that. The first thing he did was he went through the house and got a pillowcase, and then he came back and he said the process was to go pick up those things that he was going to take and leave them in a central location and come back, as he went through the house, and put them in the bag and leave with them. He had gone downstairs because he was going to get some meat. One of the things he indicated to me is a lot of times when he went into a place, people had freezers and he would just take some meat because it beat going to the grocery store. He'd just bring some meat out and keep it. He went downstairs, located that, and there was a pool table down there, and in the process, he made a determination that obviously it's a lot simpler to go out the back sliding doors. There was a little cement patio kind of thing back there. He would go through there and put it in the car rather than go upstairs and go out that way. When he touched that door, that's when all hell broke loose.

MR. HARKINS: Object to that characterization.

THE COURT: Sustained.

A. That's when the burglar alarm went off. He said, "I couldn't believe it." He was at that point not only surprised,

but irritated at himself for letting that happen. I gained the impression on several conversations with him that he knew better He was more polished than that.

MR. HARKINS: Object to what counsel's impression was.

THE COURT: Overruled. Go ahead.

A. Anyway, it went off. He did not know at this time that anybody was around so he figured he would get what he could right quick and get out, and that's when Shinn first--in the meantime, the two Shinns had heard it down at the senior Shinn's home, had come up there, and senior Mr. Shinn was outside the vehicle, and the son started around. He told me--this tied in with what was in the evidence at the probable cause hearing--Mr. Shinn testified that he saw his son just as he got around the edge of the house there stick his hands up, and that he never saw David at that time, but as he went on around the house, David held a gun on him, said, "Come on in." David got him downstairs and then--

MR. HARKINS: Objection.

THE COURT: Overruled.

Q. This is what the defendant told you?

A. Yes, sir.

MR. HARKINS: To avoid being disruptive, could I have a continuing objection and motion to strike to this line of questions?

THE COURT: You have those. Your objection and motion

to strike--your objection is overruled and motion to strike is denied. They are to continue throughout this witness's testimony as to conversations, any conversation that transpired between the witness and the defendant. All right. Go ahead.

A. In any event, he had him standing there. He knew, according to what he told me, he knew if he knocked him out or tied him up, he could be identified. He just couldn't stand the thoughts of being identified and serve 20 years in prison. Shinn asked him not to shoot him. He said that--

Q. Excuse me. Is this Wayne Shinn?

A. Wayne.

Q. Wayne asked him not to shoot him?

A. Asked him not to shoot him. That he had no feelings about shooting him. He could have shot him in the face, shot him in the back. He decided to shoot him in the back of the head, and he shot him. He fell right where he was, and he said, if I recall correctly, ht thought he moaned or something of that nature. He started out around, and then it dawned on him that somebody else was there. He started around out from underneath downstairs, around by the patio and the drive there on the right there, and he saw the senior Mr. Shinn, and he was surprised to see him, and said that the old man started running, and he knew he had to run him down, and he ran him down. He said that he jumped in the truck and started out backwards, and he was panicked to death, and that he ran into a

sort of ditch or little culvert, low place there, and the truck stopped or stalled. In any event, he jerked the door open. What the State's evidence never did show but what David acknowledged was that Mr. Shinn kicked several times and kicked the gun out of David's hand. Shinn never testified to that. But David picked up the gun and then got back on him, said he thought he was going to have to manhandle, fight him. He got the gun back. I don't think Mr. Shinn knew David lost control of the gun for that short period of time, a second or two. In any event, brought him back out, told him to start walking around the house. Mr. Shinn asked, "Please don't shoot me. Whatever you do, don't shoot me." A car passed by at that time. They live in the country, and a car passed by at that time, and he held the gun down so it couldn't be seen, and kept on walking Mr. Shinn up there and just never let him know what was coming. He raised the gun and shot him in the back of the head, and the old man fell quickly--and I'm using his terminology that he referred to Mr. Shinn as. That he got out of there, got his car, got out of there, and in the course of this unexpected event and excitement, he forgot the crowbar. That he went over and got Phyllis to come back with him because he didn't want his car back over there in that area. He threw the gun in Lake Concord going over there, then came back, got the tire tool. That he told--over a period of time, he told Phyllis the whole story from A to Z. They went on to Salisbury

that day and saw a couple of different people, shopping, that kind of thing. That he felt real safe about it because he knew no one could identify him, and that when the news got out, both in the paper and on the radio, that Mr. Shinn had lived, he did not believe it. He couldn't believe it, because he knew that he shot both men in the back of the head, and he just could not fathom the fact that the man had lived. And he indicated to me--I think he stated to me, "It took me a day or two to believe that." Then he still felt pretty secure about that because he figured that Mr. Shinn was so excited and possibly there might have been some kind of emotional reaction or shock reaction, and he probably couldn't identify him. He felt safe, extremely safe, about Phyllis knowing. That's the last person in the world he thought would ever give him any problems. Then we went into the relationship that he and Phyllis had had over a period of time. Apparently it was a relationship that was a friendship, companionship, but not lovers per se. He said he lived there. She cooked the meals, washed his clothes. He would go out in the evenings wherever he wanted to go, do whatever he wanted to do, and she would do likewise. He knew she was a prostitute, came from a very religious family, her mother particularly; felt they, or she, would not want her children--the community and her people to know she was a prostitute. That would be itself one of the great deterrents in having her say anything. He never expressed a

feeling of what you would call someone in love with someone. He certainly expressed a great deal of concern and interest and closeness to her. He thought a lot of the children involved. He looked after her. He described how he would participate in things around the house, sort of help in the housekeeping chores, clean up, cook occasionally, do some things like that. Apparently they lived in a relationship based on a mutual kind of understanding and agreement. Sometimes he even loaned her money if she was a little bit short and he picked up some money, and she would pay him back. And vice-versa. He had total confidence she would never say one thing. He could not fathom that she would ever turn State's evidence on him. Even after his conviction and the letters he wrote me, that was the one thing he just couldn't accept. That was the personal relationship between him and her, I assume. In any event, he told me about Lisa Green. He told me how that this was sort of his girlfriend and that she had a child, if I recall, and she stayed with another man. He still saw her and she sort of had an arrangement that he had discussed it with her and that she was willing to give him an alibi. That she would lie for his benefit. The fact she wrote to Mr.--to the Kannapolis paper saying he was with her, various and sundry things. He acknowledged she had some real problems. That she might be subject to effects of alcohol or something else, and she was not stable emotionally, but he felt she could stay

in there with him. There were some letters back and forth between them, but that her alibi was a flat lie. Wasn't any semblance of truth in it. The process was he had been with her the day of -- and, of course, he was with Phyllis the day of, was seen by different people at different localities up in the Kannapolis area, and David's feeling was that people wouldn't be that sure. Was it that day or the day of the killing? The day of or the day after? If she said it was the day of, that was it. One of his strategies was if the police officers wanted to talk or the solicitor, to go down there and see them. Be cool, confident. Don't bring anyone. Don't panic. Be cool. Go up there and say, "What do you know?" Say, "I don't know nothing about it." It was sort of a reverse psychology. David is a very smart man. And he's keenly aware of how to manipulate. The man is one of the greatest con men that ever lived.

MR. HARKINS: Object to that characterization.

THE COURT: Sustained.

MR. HARKINS: Move to strike.

THE COURT: Strike that from the record.

A. He figured just what he would do to help fend off anybody pointing a finger at him. In any event, we went through this procedure. I'm just talking about his criminal activity in relation to this act, though there were other things discussed. From that point on, I knew that what I had to do was set up

a defense perimeter, I wasn't going to be on the defensive with evidence. I was going to try to hold the line, punch dots in the State's case wherever I could and try to discredit any witnesses the State offered. As a result of that--we discussed this--I couldn't put him on the stand. I told him what the consequences of going on the stand were, because he had either one of two choices: he either had to admit he did it or lie. And he wanted to use Lisa Green. I told him right upfront, "I won't put up perjured testimony. I'm not going to do it. I don't think I have to. I don't care what they find. I will never do it in this case--I'm not going to do it." And I told him that. He kept coming back, "Well, use Lisa. Get these other people. Don't know whether it was this day or that day." I ruled that out at the top. The only thing we had left to do is if he took the stand, he would have to commit perjury, and I wasn't going to be part of that. The best thing to do was hold a defensive line and try to punch holes in it. I felt like the jury wouldn't believe Phyllis because of her activities as a prostitute. That Mr. Shinn would probably not be believed because of the panic and all that kind of stuff. In any event, from the early stages after that, after those initial interviews on this case, I knew I had to strike a defensive posture, and so I prepared my case in that eventuality way down the line.

Q. And you informed your client of that?

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right down the line. Didn't give me much room to improve.

Q. Obviously, realizing that you had to adopt that posture, you eliminated Lisa Green as a possible witness?

A. Absolutely, because I explained to him, I said, "David, you put her up and she's emotionally unstable to start with. You've already told me she'll lie." You see, the thing about it is to get him to understand what you've got to look out for from a trial strategy. Sometimes putting up evidence, you get 10 percent of good and 90 percent of hell, and the reason is you've got to anticipate what the State is going to cross-examine on. If you put up a witness that can give you 10 percent of what might be favorable to you, you've still got to look beyond that point and get to what the State can do when they come back. They were just hoping, I know, that I would call her. That would lay open lies, show "He put her up to it." Perjury, man, that's the only thing that could be worse. I had enough problems as it was. That's the point I took it from.

Q. Did you at that time discuss your decisions with your client, talk to him about how 52A-2000 worked, the bifurcated nature of the trial?

A. Went into that on several occasions and told him when we got in here, here's the way we'd work this. Frank and I set it up. I would go down and talk to David. One one day Frank would go, and the next day we might skip and shift around a

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a little bit. Then Frank and I would come back and compare what we were receiving on various things, and I felt like he was more detailed with Frank as to the very nitty-gritty of the crime itself, but he was more open with me as to the philosophical approach to the handling of this trial. We went into this bifurcated thing, and he clearly demonstrated to me through the process I discussed this morning about his ability, that this is what he wanted to do, even though it was the kind of thing that in doing, could tie my hands on what I could do on the sentencing stage of the trial.

Q. He talked to you repeatedly about the fact that he wanted to die if he were found guilty; his bottom line to you was, "Get me found not guilty or get me death, one or the other," and you talked to him about that on many occasions?

A. We discussed it at some great length. We discussed in in these aspects, as I recall. We discussed it on a philosophical basis and discussed it on a legal basis and discussed it on a strategy basis, where that put me in trying to defend him. I brought out in one of our conversations the fact that the Supreme Court was in this posture of reviewing all death sentence cases to make sure they were equal and not prejudicial to race and some of the other factors that were involved, and that at this point, no one had been put to death. Barfield was still alive, others, and I told him repeatedly, "I am opposed to the death penalty," and I still am today. I believe

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that if man gets life, that should be life, but I don't believe in taking anybody's life. That's just my personal belief. In any event, I told him about that fact, and then he says, "I want to be put to death. I don't want to sit around and wait for them to make a decision." I said--well, part of the process was feeling him out to make sure he wasn't playing me like he did others, and that he clearly understood this. So I was on track to see, and he would repeatedly come back with sound judgments, that's what he was telling me, and telling me why he wanted it. I told him, I said, "Well, you put me in one hell of a position." I said, "I'm trying to save your life and you're trying to take your life." He said, "I don't want to sit down there and wait forever for them to make up their mind." I don't know. There's an old writ called Macdamus, Mandamus, whatever. Anyway, why you can fail to get a public official to perform his duties. And I said, you know, we could file one and maybe get somebody to get them to put you to death, go that route. He said, "You realize what they would put me in? If I chose to do that, I'm down there years and years, and they're not going to put me to death, but I'm sentenced to death." In other words, if they're going to do it, do it. If they're not going to do, don't do it. Is that what you want me to convey, that's what you want me to try to accomplish for you? Then we we went through this process again--I don't know how many times--about the quality

of life. That he did not want to live in that situation. That he would not live in that situation. That's what I mentioned earlier this morning. When the lady that was a paralegal or whatever, we discussed all that. We talked about whether it was a legal point of view, philosophical point of view, trial strategy point of view. We discussed this on many occasions.

Q You discussed mitigating evidence with him, did you not?

A. I indicated to him by him taking the stand and saying, "I want to be put to death," that literally took away from me the most mitigating circumstance in all this, and that's a man wanting to save his own life. It's pretty difficult when you're trying to convince that jury, the evidence we discussed, the possibilities we had going through this process, the mitigating evidence--what can I put up as mitigating evidence? And I talked to all these people, and the only kind of thing they wanted to give me was he was a pretty good guy. Violating the law--he was tough, he could handle his own--lived with a prostitute--those things. I thought about, well, even though he hadn't seen his mother and father in all these years, what do you do? Get her down here? I went through that same process of a little bit of good and whole lot of bad. You put up his mother: I love him. I hate this has happened. I don't believe he could do it. Whatever she might say. He was a good boy. Came up, worked hard. His daddy left.

Whatever it might be. Then cross-examination: How long has it been? I haven't seen him in five years. Did he ever write you? No. Ever send a Mother's Day card? No. Ever send you anything for Christmas? No. You see, you've got to anticipate when you put up evidence, what you're going to reap by that evidence, and I made--you know, we got into the trial the fact that he had been a good worker, by implication, up at the Kmart, looked after kids, Phyllis Soden. That he had a minimum of crimes. Some of this came out on the examination at that stage.

Q. In fact, you did bring out through his evidence when he was in the sentencing stage that he had lived apart from his parents a number of years but that he had cooperated with law enforcement; that he had not much of a record, didn't you?

A. That's true. I didn't want to bring those officers down from Stanly County because they had a lot of feelings for David that weren't completely complimentary. I knew here again, what you reap on cross-examination. You've got to balance that. It's critical, a critical decision. Of course, sitting here today with hindsight 20/20, there are plenty of people to say you should or should not have done that. I'm as convinced today as I was then that I gave him his best shot in handling it that way because of what I knew.

Q. Now, when the defendant testified that he wanted death, he did that only over your objections?

A. We discussed that was what he wanted to do. That's the reason I had him questioned by the trial judge outside the presence of the jury. I wanted something in there to indicate how long this had been oncoming. At this portion of the trial, Frank became extremely upset. Frank talked to him about the religious aspect. "Don't do this." He was set in his mind. That is, Lawson was set in his mind to do this. And he instruct me to do it, and he instructed me that after the case was over with and after he was put to death, I should never tell anybody. He wanted the jury to suffer, always wonder whether or not they had made the right decision in this case. I went over these conversations with him time and time again. It was the same thing, over and over, and brought out things about--that David could not accept one thing. That Mr. Shinn did not die. He just couldn't get away from that. I doubt if he could deal with the realization that Phyllis could turn him in.

Q. Now, you took Phyllis Soden's statement which the State provided you, even though they did not have to?

A. Right.

Q. You gave that to Mr. Lawson, had him go over it, did you not?

A. Yes.

Q. You took him down each strategic decision, avenue, development in the case as it came to you, did you not?

A. There was really--it was a matter of a defense all the way.

Questions by Mr. Johnson; Answers by the Defendant:

Q You understand? I want to explain something to you, and then I'll type up something. Is it my understanding, after we've talked about this stuff, my understanding is that you wanted to do two things, if possible.

A Yes.

Q If we assume that you are found guilty, we don't know but we're saying if we got to that status and you realize this is a second trial--

A Yes, sir.

Q --same jury, second trial. As usual, I can ask for a verdict. The judge would give us anywhere from--he might postpone the second trial to the next day, say, "Or I'll tell you what. The jury has now returned the verdict. It's 11:00 o'clock. We'll be back at 3:00 this afternoon and have a second stage." But there will be some span of time, and then, "All right, call your next witness." Okay? At this point in the trial, the State will offer evidence which they call aggravating, and I gave you a copy of that.

A Yeah, I know, aggravating.

Q That is, was it a heinous type thing or was it committed with some hostility above normal, or this kind of thing. Well, you committed it in the course of a felony, breaking and entering. If they find you guilty--if they find you guilty of that, they're going to find--if they find you guilty

of the killing, they'll find you guilty of (two voices at once)--

A Yes.

Q Okay. That goes along with the package, but what I'm saying is they will put in those circumstances of past criminal record and how you deliberately and willfully did it, whatever.

A I'm not denying the fact that I deliberately did it.

Q Okay, but now, and you come along and you put up any mitigating circumstance, which is that you were emotionally upset or mentally wrong, whatever. We don't have any of those circumstances in this particular case. Or that you're a nice guy, all this kind of stuff. Okay, that's the second trial. And then the judge charges, "Ladies and Gentlemen, if you find that the aggravating circumstances--(unintelligible)--that the aggravating circumstances outweigh the mitigating circumstances, then you would be permitted to find--return a verdict of the death sentence. On the other hnad, if you don't find the aggravating circumstances outweigh the mitigating circumstances, then you would find that he should be sentenced to life." But that's--(unintelligible)--but anyway, that's basically what that little second trial is about. And as I understand, your position is, if that jury comes back on the first trial and says, "We find the defendant guilty of the murder and guilty of the assault with intent to kill and the robbery," the whole thing, which would max at about 180-some odd years--

A (Laughter)

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Q That is, if you were given a life-plus-plus on the sentence. Now, it's my understanding--we've talked about it--that what you want to do is say well, if you found me guilty of this, just sentence me to death.

A That's right.

Q Well, realize that that's an approach--

A It ain't never been done before.

Q Well, most people jump up--don't say it--but what I'm saying, what we would have to do would be probably prepare a very extensive legal document stating that you and I had discussed this matter on a number of occasions, six or eight times now.

A I'm never going to admit that I done it. As far as I'm concerned, they just don't have the evidence to know for sure. Well, I don't know if that's true or not, but they just don't, and you know--

Q You base that on the fact that there is no eyewitness, just people who say--

A This and that and the other. His description of me wasn't shit. Am I right or am I just lying to myself?

Q Well, it's enough to get by, obviously. In other words, he describes a man--he describes a man who fits your general characteristics with the beard, the height, the (unintelligible). The only difference is variation, and that very well may be just an excitable oversight on his part--he's not heavy about

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the glasses or the non-glasses. He just remembers the eyes, beard, and this kind of thing. But that's--that little discrepancy there may or may not punch a hole in the jury's mind as to, you know--

A He said I had black hair, black beard.

Q Well, here again, at a time like that, you go on impressions. It's like seeing something in a flash, you know--

A But the man seen me coming from 100 and some foot. You'll bring all this up, I know.

Q I know. What I'm saying is you keep arguing that they can't believe that. I'm telling you if they want to, they can believe that. That's where we're going.

A This is what I know. (Laughter)

Q Back to my point. Assuming all the arguments we make about the identification and this woman has just got a heart and, you know, she's a little unsavory character, woman of the streets, don't believe her. Assuming all that passes and argument is made and they do return that verdict, then the judge is, under law, bound to give a second trial. No man, to my knowledge, except maybe one recently got up and said, "Just let me take the long walk. I don't want to waive this." Well, the judge, in my opinion, would go ahead as required by law and give that trial.

A Yeah.

Q Then he'll go through that trial session, and that would be

the position to take. What I have spoke to you about before was trying to put the State in the position of implementing the death sentence. I think it's hypocrisy, frankly.

A. I know your feelings about it.

Q. If they're going to do it, do it, if they're not going to do away with it. What you want to do is try to make your case somewhat a test on that.

A. Not really. I want it done, but I don't, you know--

Q. It would be testing them in the sense that you're saying, "Look, you found me guilty. That's it. Let's get the sentence over, and I want the death sentence. Don't send me down there on Death Row and keep me there the rest of my life."

A. That's not really what I want to say, Jim.

Q. All right.

A. I want to say, you know, you've got to look at the quality of a man's life. Man, that prison system, you just ain't got a whole lot to look forward to day after day. Let's be honest about this thing. You know what I'm saying? You always have the urge, always have the pressure on you. I mean you just don't have nothing to look forward to one day or the next, never, ever, and the quality of your life just ain't worth living if you ask me. You ain't doing nothing but just taking up space in that thing. You're doing no human no good whatsoever, none, absolutely. Just as well kill the man, save the taxpayer some money, and I've thought about this thing for five months. I

know exactly what I'm saying, exactly. That's it, the way I feel about it, completely, Jim. I mean if you--life ain't worth living in there for me. That's the reason the thing was done to start with. If he can die, I can die, too, to preserve my freedom. Do you know what I'm saying?

Q. Uh-huh.

A. I'm not scared of that chair. When I get in the thing, I intend to tell them all I'm still not guilty. I'm doing my right, whatever it takes.

Q. Would you be willing to tell that to the jury?

A. Yes, sir. That would be--the quality would do nothing for me, nothing to look forward to, one way or the next, really. The nerves, the pressure, being right with a bunch of logger-heads the rest of your life. Just ain't my idea--gee, we save taxpayers money, too. That's the way I feel about it.

Q. Well, I can understand with no chance of parole.

A. One hundred and eighty years? I doubt if I outlive it.

(Laughter)

Q. But that is the route you want to take? You're sure of it?

A. Yes, sir. Yes, sir. Entirely. My feeling is they ain't never going to know for sure. You ain't never going to tell them, and you know, after I'm dead and gone, I don't want you to tell them. I want them people to be thinking about it. They found me guilty of this bullshit, as far as I'm concerned. And you do know what I want? You're doing me a

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favor. You're getting me out--I'm out of the prison system, one way or the other, that way. I told you how I feel about death.

Q You're still firmly convinced you were here before and will be here again?

A I believe it.

Q When you were here before, when, where, how?

A (Laughter) Don't ask me. I'm probably the same kind of man this time I was the last time.

Q You said one time--or maybe it was me--but I was somewhere thinking about this the other day--I think about your case, what I want to do.

A I know you do.

Q I was thinking you said something about the fact you knew that you could have or you did ride with Jesse James or something. There was something--

A Uh-huh, yeah. I always--I mean I've always felt like that. I've always had that larceny in the blood or whatever you want to call it, you know. I'm not the all-around-the-world guy right now. I work hard for my living. Only reason I steal is I can't make enough money. Didn't have enough sense to stay in school down there and get my college degree and everything like I could have. And I go out and do these things to make my money to buy the things I want, and you know, I'd do it again if I had to.

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Q You'd kill again if you had to?

A Yes, sir. In a heartbeat.

Q You feel like that? This experience wouldn't--

A No. If you let me out today and somebody threatened me, I'd do what I had to in the same situation. I would. But I wouldn't tell nobody. (Laughter) Don't tell nobody. I'm sorry, Jim, but I know what I'd do. That's a fact. I have no remorse about killing the man. I've thought it over, laid in that bed and thought about it and thought about it, you know--you killed a man, you know--didn't have no damn choice though. I mean, you know, I hate the old man didn't die, Jim. (Tape skips at this point.) Hard son of a bitch, but if he had died, we wouldn't have no case.

Q True.

A I meant to kill him. And I thought that one bullet would do it, but the man was harder to kill than you'd think. Next time it won't be just one. Probably empty the whole cylinder out. I like to think that if you get me out of this, I guess you know a lawsuit's going to follow. I like to think I'll get enough money out of that lawsuit to go back to school.

Q What kind of lawsuit? You haven't got anybody you could sue except you could sue her.

A You could sue the State.

Q You could sue her but you couldn't sue anybody else.

A Couldn't sue him?

D-42

Q Huh-uh.

A Why?

Q There's an Immunity Act that a victim who testifies is protected just like a law enforcement officer. If he arrests you and it turns out to be a bad arrest, you can't turn around and sue him. If you didn't have that protection, every law enforcement officer and every victim would be afraid to testify. (Unintelligible) So there's a statute that protects them from being sued back, but not other individuals.

Q I couldn't sue the State for blasting my name through the papers and all that mess?

A No, because you've been vindicated. See, the State would never be able to act if it was subject to that. This goes back to the old commonlaw of England. The king can do no wrong. He might make a mistake, but he can do no wrong. It's an immunity toward the government.

A I'll be damned. I didn't know that. I thought I could sue the State for putting me through this damn thing.

Q If you could, the Court would be full of this kind of stuff.

A Putting me in fear of my life, all this and that.

Q Obviously, you would have the right to file a suit, and get about as far as the front door, and as far as the gal goes, what the heck--

A She ain't got nothing.

Q That would be a losing cause.

D-43

Q In any event, you know, there's no monetary gain to be-- you know, it's just like this girl I got off on this murder over here, her husband, you know, she's destitute, little kids, and she can't turn around and sue them because she was tried and kept in jail, all this kind of stuff, this kind of thing. I think that, you know, there might be some justification for some legislation in the future which would allow an individua who has been found not guilty or who--I think the only case is where a person has been found guilty and sentenced to prison and actually served time, and then the true person comes up and says, "Hey, I did it."

A But it cost me my job. I haven't been able to make no money back there in jail.

Q But you see, what it comes back to is you put yourself in that position. You voluntarily put yourself in that position.

A What do you mean?

Q By getting caught.

A I voluntarily--I didn't voluntarily get caught. (Laughter)

A Well, as the old saying goes, if you can't do the time, don't do the crime.

A (Laughter)

Q That's where you come from. Well, in other words, if we get to that stage in the trial, that that is the position that the trial is in with a conviction, then what you're saying is that you authorize me, (1) to waive the second trial and ask for

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the death penalty on your behalf.

A. That's right.

Q. And obviosuly, what I would do is prepare a legal document of some length stating that we had discussed this, the ramifications of it, and that you had authorized me to waive the second trial and ask for the death penalty. I think the judge would overrule my request for that but go ahead with the second trial. The State would put up its evidence, and then I would simply put you on the stand and say your bit. You see what I'm talking about? As a result of that, that would put us in the position of the State, assuming the jury acted on the request--you must realize there might be a reverse psychology here. The jury seeing a man simply trying to destroy himself, they may react that way, thinking well, we have a responsibility to save him. See what I'm talking about? You know, maybe he can be redeemed, maybe it won't be this bad. You know, human nature being what it is--because when you get back in the jury room and you're deciding a question of life or death, that's a whole separate ballgame, you know? No one wants to vote to kill somebody. They don't want that on their conscience. Now, you might relieve that burden from them, saying, "Go ahead and do it, because that's what I'm asking you to do," but still they've got to wrestle with the proposition that they have to live the rest of their life with the fact you couldn't have been put to death unless they in a sense okayed it by coming back

D-95

in and recommending it. Now, the judge has nothing to do with this because if they come back and say, "Life," he's got to give you life, even if he wanted to shoot you himself.

A. (Laughter)

Q. See what I'm talking about?

A. Yeah.

Q. On the other hand, if they come back and say, "Death," he's got to give you the death sentence, even though he personally is opposed to the death sentence. I don't know how Judge Davis feels about it now. Jim and I were law partners for many years, and I know that he has in the past been very adamantly opposed to the death sentence, but, you know, he wouldn't have any choice. He's got to do whatever the jury says. That's the crux of that question. But what I was getting to that we had discussed before, every person who has been sentenced to death in North Carolina since this new act was passed in the mid-'70s, no one has had the execution carried out because there's a provision in the statute that simply says the Supreme Court will review the implementation of the death sentence to see that it's not being capriciously or arbitrarily applied. What they're driving at is this. We want to make sure we're not killing more blacks than whites or whatever. Right now the population of Death Row is about on the basis of the population generally. There's as many blacks down there as there are generally in the general population. There are many whites on Death Row down there, and

D-46

there are some women down there. So it transcends both sex, age and race, and based on that, what I was thinking about doing if you want to proceed in that fashion; was then to see if I can file a Writ of Mandamus to force them to do that, because on the theory that if you've got a death penalty, make it work. If you haven't, just say we have it on the books but it doesn't work so we're doing away with it. I'm prepared to file a Writ against the governor of North Carolina to say, "Okay, this guy wants it. Do it." And if he comes back and says, "Well, the point there is they haven't decided," that's not the questic He doesn't care whether the Supreme Court waits another five or ten years to decide this question. He knows he has been voted the right to be put to death, and it's your responsibilit to carry that out. If you don't, you've violated his constitutional right because, you know, this is an entirely different question down the road, but it has to be sort of raised now to do it, but the unique position you're putting me in as a defens lawyer is totally out of characteristic of what I generally try to do, and that is, to save the guy's fanny, and you're saying, look, if we get to that point, don't do that.

A. No, don't save my fanny, Jim. You're not doing me no favor if you do that, by leaving me in prison, really you're not.

Q. I understand where you're coming from.

A. I mean, you know, I hope you do. I hope you understand entirely.

D-47

Q. I do. I think if I was in your position and that was the only alternative--

A. And I'm getting out. (Laughter)

Q. You are getting out. And say--looks like a parole--

A. (Laughter) Haven't seen many paroles like that, huh?

Q. No, but there are not too many people that want to take that parole, that method of parole.

A. You know, they've got that other big boy back there they've already charged in first-degree murder. He's already wanting-- (Laughter) You ought to see that sucker, boy. He would make three of me. He's huge.

Q. I've heard he's a big man.

A. A very big man.

Q. Okay. Well, being we've got that down, I'm going to hold on that and then we'll see.

A. Like, you know, that Karen Ann Quinlan thing?

Q. Yes. You know about that.

A. I agree with them people 100 percent. If she can lay there and live without all that, all them monitors and stuff, you know, but if her brain's dead, you know, she ain't nothing. She ain't doing nobody no good. She ought to be dead. I would want to be dead. I'm sure you would.

Q. Right.

A. There's just no quality, no sense in living. There's nothing there. Nothing. The same way with being in prison.

D-48

You ain't got nothing to look forward to one day or the next. Fighting off a bunch of loggerheads every five minutes, having to put up with them people, it's just not--just not having the things that make life worth living to me.

Q. Have you served time in prison before? You did, didn't you? You served a sentence in Stanly County?

A. Yes, sir. Entirely different prison.

Q. Sort of like a trusty?

A. Yeah, that wasn't--that was like a--

(Both speaking at once, laughter)

A. I about done the same thing, you know, but I think I got a pretty good idea of what prison would be like. I don't know how my nerves would affect me just being around a bunch of people like these back here, you know. I wanted to flush several of them down the toilet. But I know when my trial comes up, that wouldn't look too good. But what has a man got to live for? What can you look forward to? Getting out in 30 years, old man? I'm in the prime of my life. I mean I talked to some people about it. They say, "Well, you know, don't ever give up." Thirty years? I know people that have a family and got what they wanted when they got out after they spent all this time, you know, but I just don't think I would want to. I just can't handle the idea of spending so much time in the place like that. I mean I might do the same thing. I might commit suicide. I don't want to do it, but I would (unintelligible). You know

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what I mean?

Q. Let me ask you this. What--did you ever think back to what this came out--what did you want to accomplish in life? or where did you want to go? Did you ever have any particular plan or--

A. What did I want to accomplish? I'm a split personality, Jim. There's two people. There's two pieces to me. Part of me wants what the other man wants, a family, work, you know, come home, this and that. Then there's a part of me that wants to have some sort of power or something, you know, like plenty of money, flash that money around, be somebody, be a big man, have anything you want, any woman you want, go where you want whenever you want, whatever you want, not having to work. You know what I'm trying to say? Just live life easy. If I want to take me a cruise to the Bahamas, go take me a cruise, you know? And I will not be broke. I will not. I will not put up with being broke. I work Monday through Friday and if I got $100 in my pocket, I am happy. If less than that, I'm looking for somebody to rob, some way to make that quick. That's really my downfall. I get a little bit of money in my pocket, get into gambling--and you can't win gambling, nobody can, no human can. Go out, get broke, and next thing you know, I'll be out robbing somebody.

Q. You said that you had a rough time coming up when you were a kid?

D-50

A Well, yes.

Q You don't contact any of your people now and they don't contact you?

A I don't mess with my people at all. I called my mother because the Concord Tribune called her, told her they run the Tribune and they told her I was down here for first-degree murder ald all that. I called her up and told her I was innocent and not to worry about nothing. They didn't have no case on me and everything. And I thought that was a dirty thing to do. They didn't have no cause to call her, none of her business. If I had my way, she would have never knowed it. I just went on here last five or six years, just had no contact at all with her. She's nervous about it and tore up about it, told me to call her and let her know what happened, you know. I can't relate to my people at all. They just don't understand me. When I was young, I dropped out of school the beginning of the tenth grade, and I done exactly what the paper said. I run with a big gang down there. They call us the Purple Gang. There's six or seven of us boys, called us the Purple Gang after mobsters that used to live down there, Purple guy, used to run with Capone. We pretty much ran the town. We went around rolling gunks and stealing and everything under the sun, and we were good at it, and we got away with it, and we got away with it all the time. They surrounded us one night down there. They had a big college down there, Central Michigan

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University, and we were hitting them dormitories. I don't know if it was Easter weekend or Thanksgiving weekened. I can't remember. But one of them weekends when the whole college was away. We were hitting all them little apartments down there. Looked out the window and the whole damn place was surrounded by them. Matter of fact, they caught us. They were watching.

Q What did they do to you then?

A I spent five months in the boys' home, boys' camp. You know, when I look back at it, that was probably as good a time as I ever had when I was a youngster, was when I was there. Hell, I tried to run one time. Tickled me. My nerves, man, I just couldn't handle, you know, just being locked up all the time. People, they got to know me, and they let me do what I wanted to. Didn't have to go out. I worked around there with the maintenance man. When I wasn't working--had a lake there and they let me take a boat and go out there and fish all day long, do whatever I wanted to. Within a month, when I was leaving--when I first went there, actually on the first day you got to show you're a man, can't nobody mess with you. A big nigger down there, I was sitting there watching TV in the front. He was--he got up. The rule was when you got up, you lost your chair. So I went over and sat down, and he come over there and jumped me, and I went to his ass. They split us up. I got to talk to him the next day. He said, "Want to have it out? If not, forget it. Let it be.

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No hard feelings about it." "Fine." The man respected me about it after that. I went to run one day, and he was sick in there in the bed, and he seen me going. I got about three miles down the road, and he tackled me and told me he wouldn't let me run. I was going to get out in a month. Said, "You ain't running. You're going to stay here and get out." I never had anything happen. I never talked to the man much. Never really had no use for him. When I got ready to run, said, "No, you ain't gonna do it. Stay here. Do this time. Get out and you ain't going to have nobody worrying about it."

Q Did you a favor?

A Done me a hell of a favor. First time I met him, we had a big fight down there. I can look back and see how my nerves were then. I know they'd be worse now, especially in the prison system the way it is, back here, being locked up, just nothing. Hell, I like my ladies as much as the next man. You know, I like my money. I like my freedom. Like to go where I want, do what I want. That's essentially the way I live.

Q Why would you jeopardize that by doing what you did?

A For money.

Q For money? The thrill?

A Ah man, that's a hell of a thrill. (Laughter) I had to shoot the man, Jim. I didn't have no choice. If I had let him live, tied him up, got up there and got his father and tied him up, I wouldn't have no chance in hell of beating it.

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Q You would have had the same thing. You could have shaved your beard, not been identified, you know.

A You reckon?

Q Obviously--

A They both seen that damn car. Anybody could pick that damn car out. The boy would probably remember it had a white top and all that, you know? Could have remembered the dents in the darn thing. He was a lot younger than the other man. The only reason the other man can't describe me or remember anything any better is because he was shot and he was scared to death. His eyes were that big around.

Q Wouldn't you have been?

A Huh?

Q Wouldn't you have been?

A Yes, sir. I don't know. No, I don't think I would have been as scared as he was. I think I could accept it. That man was scared, boy, and the reason I shot him in the back of the head wasn't because I couldn't look at him and shoot him. I figured it was the least cruel thing to do, kill him and get it over with. I said to myself before I shot the boy, I said, " well, what am I going to do with him? I said I guess I'll have to kill him, you know. I thought, should I turn him around and shoot him like a man or not let him know what's coming and just kill him right there? I said well, be easier on him not to let him know it's coming and whine to me and all this and that, you

D-54

know, and so I shot him. After I shot him, whew, all sorts of shit started going through my mind. I mean I went to look out there and see if anybody else was there. I knew I had to kill him at the time. And I had him down there a moment getting ready to shoot him again, and thought what if there's somebody else out there? I went out there, and here's the old man running toward his truck, and I said, shit, and I took off like a rocket. Get up there and catch him. I got to thinking, wondering if somebody else heard that shot. I was running toward the old man. The old man kept going. I'd have probably shot at him a couple times but doubt if I could have hit him. But he stopped the truck. He was scared, and he crawled over there in the seat and just laid back here and kicked the gun out of my hand. I thought I'd have to fight him, but I picked up the gun and turned around to the truck. "Yes, sir, yes, sir, don't shoot me. Please don't shoot me." I hid the gun and pretended like I was walking up the hill. I said, "Move. Get up that damn hill." I said, "Move." He started whining, "Please don't shoot me, whatever you do, don't shoot me," you know. We got up there in front of the house, and I said, I have to get out of here.' This car done went by. Guns, the gun's done went off one time. I have to shoot this one. I've done went this far. I mean if the man dies and this one's living all this and that, you know. So I shot him, and I shot him point blank in the back of the head. Now, right back there--

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(Tape recording stops)

MR. JOHNSON: Now, the tape drags right here, but it picks up. Okay.

(Tape resumes playing)

A. Said get my ass out of a crack, and they weren't nobody to identify me. See, Jim, when you do that sort of thing, if I did that or anything else, if you're going to go there and do it, if you're going to carry the damn gun, by God, if you have to use it, use it. Know what I'm saying? I mean how many times I've had that gun pointed at me, and I thought-- and I feel no remorse today except for the fact that I didn't kill the old man. Man, I feel remorse that I didn't go back downstairs and shoot the boy again. I probably could have saved him a lot of pain. That's the whole idea of killing him instantly like that. There was no way to determine--when it come out in the paper that they were still alive, I still didn't believe it. Just like the woman said, I didn't believe it. I did not believe it. No way they could take a shot like that.

Q. No way or not, they did.

A. (Laughter) That's a fact, son. That's a fact. But I was real nervous after this happened. The law, the pressure, you know. I didn't feel no conscience about killing the boy. I had conscience about getting caught. I thought about running,

D-56

you know. Said, naw, that's not the thing to do. Just stay here and be cool. Take your shit as it comes. If they do get you, the old man won't be able to identify you--(unintelligible)--wasn't worried about the woman. Wasn't even worried about her, not at all. That's the big shot. She had no reason in the world to turn me in except for reward.

Q She turned you in. She didn't know about the reward. She didn't qualify for it. She does now, obviously.

A She did know it. She read it in the paper. She pointed out that $5,000 that the State added to the reward, and when it come out in the paper, I come over and showed it to her. She pointed that out to me. We talked about the $10,000. The thing was she told me--

(Interruption of colloquy by Mr. Johnson and the defendant by a door opening and inquiry made about time.)

A Oh, about a week before she turned me in, I went over there. During this whole time, I did all the work. I'd stop by there, and she had me there, wasn't living with her, screwing her or nothing, just good friends, and I stopped by there and she treated me like number one, you know, and just a little while before this happened, she told me, she said, "Wild man, I know if you ever get caught," she says, "you'll get off of this stuff, this shit," you know, and I got to thinking right there, what the hell is she coming up with this crazy shit for? She just come out of nowhere. And I told her Lisa and I weren't

D-57

getting along too good, and I was living over here in Concord, and I told her I probably would want to spend the night there rather than have to drive back, you know, stay in town and see if I could line me up a lick or something. I was low on money. She generally always left the door unlocked when she'd take off to Charlotte to go to work, you know, and I come back that night, and the door wasn't unlocked. That's the first time she ever done that. I should have known something. I should have known something.

Q Well, that's the amazing thing, you know, how turns of events come about, what you figure on, what you do, and what you don't do.

A Foolish thing. I know it was. Very foolish. Could very well cost me my life.

Q Yeah, could very well cost you your life.

A Well, in your opinion, is the case that strong?

Q Yes, the case is that strong. Here again, it's direct and circumstantial evidence. And it's the quality of the evidence--

A That we're questioning?

Q Yes, not the evidence, the quality, because they have--like I said, Frank will cover this with you tomorrow and I'll cover it with you Wednesday--but they have evidence that substantiates what she says and says that someone else saw the car go by and recognized it shortly after this occurred, or something to that effect. And they don't know where you've

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been, where you're going, but it backs up her story that "This is where we went and this is where we were going right after I picked him up." You see what I'm talking about? That doesn't mean anything except these are little tidbits of information that support where she said you all drove and where you all went. You see? These people don't know nothing about nothing. They simply saw y'all together at a certain time of day, which corresponds closely to the time of day that this occurred, which sort of supports her statement of what happened, which, of course, you know--

A. I did. (Laughter)

Q. All right. You're satisfied with the way we're going about the jury then?

A. Yeah, you're doing the best you can. I don't have much chance.

(End of Tape Recording)

THE COURT: That's all of it?

THE WITNESS: That's all of that tape, Your Honor, yes, sir.

THE COURT: Are there more tapes?

APPENDIX E

E-1

THE COURT: Sheriff, bring in the jury.

(Jury enters courtroom)

THE COURT: Members of the jury, having found the Defendant, David Lawson, guilty of murder in the first degree, it is now your duty to recommend to the Court whether the Defendant should be sentenced to death or life imprisonment. Your recommendation will be binding upon this Court. If you unanimously recommend that the Defendant should be sentenced to death, the Court will be required to impose a sentence of death. If you unanimously recommend a sentence of life imprisonment, the Court will be required to impose a life of imprisonment in the state prison for life. All of the evidence relevant to the recommendation has been presented. There is no requirement to re-submit during the sentencing proceeding any evidence which was submitted during the guilt phase of this case. All of the evidence which you hear in both phases of the cases is competent for your consideration in recommending punishment. It is now your duty to decide from all the evidence presented in both phases what the facts are. You must then apply the law which I am about to give you concerning punishment to those facts. It is absolutely necessary that you understand and apply the law as I give it to you and not as you think it is or you might like it to be. This is important because justice requires that everyone who is sentenced for first degree murder have the sentence

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recommendation determined in the same manner and have the same law applied to him. You are the sole judges of the credibility of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believ all or part or none of what a witness has said on the stand. In determining whether or not to believe any witness, you should apply the same tests of truthfulness which you apply in your everyday affairs. As applied to this trial, these tests may include the opportunity of the witness to see, hear, to knor or to remember the facts or occurrences about which they testified, the manner and the appearance of the witness, any interest, bias or prejudice a witness may have. The apparent understanding and fairness of the witness, whether his testimony is reasonable and whether his testimony is consistent with other believable evidence in this case. You are the sole judges of the weight to be given to any of the witnesses. By this I mean that if you decide that certain evidence is believable, you must then determine the importance of that evidence in light of all other believable evidence in the case. Members of the jury, I will not go over all of the evidence as I did in the guilt determination phase or -- in the guilt determination phase of the charge. However, it is my duty to recapitulate part of the evidence so that I might give you the applicable law that applies to the evidence. You recall that the State in this case offered evidence which tends

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to show that on or about eight A. M. on the fourth day of December, 1980, Nancy Shinn left for work taking her three-year-daughter to the babysitter, that about eight-fifteen on that morning, Buren Wayne Shinn went to the Buren J. Shinn house in the company truck, that thereafter they heard a burglar alarm at the home of Buren Wayne Shinn. As they drove to that spot and after they had gone to that spot, Buren Wayne Shinn got out of the auto -- truck and went into the house or went around the side of the house, I believe. As he crossed the one patio and started down to the lower patio, he threw his hands up into the air over his head, that he said something and that he then was seen by Buren J. Shinn thereafter. That the detectives, upon arriving at the house, found the deceased -- found Buren Wayne Shinn unconscious and with a bullet hole in the back of his head. That he was taken to the Cabarrus Memorial Hospital, and thereafter he was transferred to the Charlotte Memorial Hospital where he was at that time, according to the doctor, brain dead. The next day he expired. That, that the Defendant in this case on that occasion was the person who Buren J. Shinn saw come from the house after he heard gunshots and came to that place and took him out of the automobile or out of the truck around to the back of the house where he shot Buren J. Shinn in the back of the head, that the Defendant thereafter went to the home of Phyllis Soden or Soden and asked her to take him some place quickly. That she took him back to the home of

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Buren Wayne Shinn where he ran into the area of the home, that he came back and she had turned around, and she picked him up a he had in his hand a crowbar, and he later took some money out of the billfold and put it in a plastic baggie. The billfold was not the type he was accumstomed to carrying. That, when th officers arrived there, they found Wayne lying on the floor in den. The autopsy, as you recall, indicated that the bullet which killed Buren Wayne Shinn was a 32-caliber slug, that in the opinion of the expert, both of the slugs removed from the brain and also from Buren J. Shinn were 32-caliber long bullets, probable make was Remington and probable weapon that fired them was Harrington and Richards revolver. That the Defendant had a 32-Harrington and Richards revolver sometime around September,1980, and that he was seen in the vicinity of the Shinn residence on or prior to eight A. M. on December four, 1980; that the Defendant and Mrs. Soden went to Salisbury sometime that day, either going there or coming back, he informed Mrs. Soden that he had broken into that particular residence where she had taken him, that he was surprised by two men and that he shot both of them in the back of the head, killing both of them and that the reason he had done so was that he did not want to go back to prison. The Defendant further told her he had thrown the weapon in the Yadkin River; that upon returning from Salisbury, the Defendant had Mrs. Soden drive him past the Shinn residence where he saw a number

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of police or law enforcement officers at that time, that the officers discovered that the door leading into the house had been pried open, that jewelry and other valuables were in a pillowcase on the sofa and part of the house had been ransacked; that the Buren J. Shinn gave descriptions to the officers on December four, 1980, of the person he had seen on that occasion, that he gave them descriptions that later dates all of which were consistent with each other and that at a lineup on December thirty-first, 1980, the Defendant (sic) picked out this Defendant as being the person who shot him on December four, 1980, the person he saw at the residence of Wayne Shinn on that date. That's what some of the evidence tends to show. Members of the jury, what it does show is for you and you alone to say and determine. Now, in the punishment stage of this case, the Defendant has taken the stand. The evidence for the Defendant in this case tends to show that he is twenty-five years of age, that he lived in a trailer off Rock Hill Church Road and has a GED education. That he has lived in North Carolina for approximately seven years, and that he has been convicted of two cases of breaking or entering in Stanly County; that he requests that you impose the death penalty; that he is innocent of the crime, but that he makes this recommendation, that he went to Salisbury with Phyllis Soden on the date in question, that he was wearing a black cowboy hat on that particular date; that he did try sometime

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after December four, 1980, to purchase a pistol. That's what some of the evidence for the Defendant in this case tends to show. Members of the jury, what it does show is for you and you alone to say and determine. I charge that for you to recommend that for the Defendant to be sentenced to death, the State must prove three things, and prove these beyond a reasonable doubt. A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented or the lack or insufficiency of the evidence as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or convinces you of the following things: first, that one or more aggravating circumstance existed, second, that the aggravating circumstance or circumstances found by you are sufficiently substantial to call for the imposition of the death penalty, and third, that the aggravating circumstances found by you outweigh any mitigating circumstances or circumstances found by you. If you unanimously find all three of these things beyond a reasonable doubt, it would be your duty to recommend that the Defendant be sentenced to death. If you do not so find, or if you have a reasonable doubt as to one or more of these things, it would be your duty to recommend that the Defendant be sentenced to life imprisonment. When you retire to deliberate your recommendation as to punishment, you will take with you a form entitled Issues and Recommendation as to Punishment. This form contains a written

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list of issues relating to aggravating and mitigating circumstances. I will now take up these four issues with you in greater detail one by one. It will enable you to follow me more easily, the bailiff will give you a copy of the form entitled Issues And Recommendation as to Punishment which you will take with you when you retire to deliberate. Do not read ahead on this form, refer to it as I instruct you on the law. Would you please hand one to each of the jurors and to the alternate jurors? I would ask that if you've had the opportunity to glance through it, that you not read ahead, but follow this paper writing as I go through it with you. When you go into the jury room, you will be handed another, which is exactly like the one you have there. The ones that you have are duplications of this one, but the duplications are so good they look like originals so I have written in pencil on this the word original and this is the one your foreman will fill out when you go to the jury room and make up your verdict. Issue one reads as follows: Do you unanimously find from the evidence and beyond a reasonable doubt one or more of the following aggravating circumstances existed at the time of the commission of this murder. Now, there are two possible aggravating circumstances listed on this form. You should consider each of them before you answer issue number one. The State must prove from the evidence and from a reasonable doubt the existence of any aggravating circumstance. Before

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you may find any aggravating circumstance, you must agree unanimously that it has been so proven. An aggravating circumstance is a fact or group of facts which tend to make a specific murder deserving of the maximum punishment prescribed by law. Our law identifies the aggravating circumstances which might justify a sentence of death. Only those circumstances identified by statute may be considered by you as aggravating circumstances. Under the evidence of this case, two possible aggravating circumstances may be considered. The following are the aggravating circumstances which might be applicable to this case. First, was this murder committed for the purpose of avoiding a lawful arrest. Now a murder is committed for such purposes if a Defendant's purpose at the time he kills by that killing to avoid the arrestof himself and that arrest would have been lawful. If you find from the evidence beyond a reasonable that David Lawson killed Buren Wayne Shinn and he said that he had to kill the victim so that Buren Wayne Shinn did not identify him because he did not want to go back to prison, and that it was, in fact, his purpose to avoid his arrest by killing Buren Wayne Shinn, and that such arrest would have been lawful, you would find this aggravating circumstance and would so indicte by having your foreman write yes in the space after this aggravating circumstance on the Issues and Recommendation form. If you do not so find or have a reasonable

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doubt as to one or more of these things, you would not find this aggravating circumstance and will so indicate by having your foreman write no in that space. The second issue in this -- under the first issue, the second question was this murder part of a course of conduct in which David Lawson engaged and did that course of conduct include the commission by the Defendant of other crimes of violence against another person or persons. A murder is part of such a course of conduct if it and the other crimes of violence were part of a pattern of same or similar action repeated over a repeated of time, however short which established that there existed in the mind of the Defendant, a plan scheme, system or design involving both the murder and those other crimes of violence. If you find from the evidence beyond a reasonable doubt in addition to killing Buren Wayne Shinn, David Lawson or on about December 4, 1980, assaulted Buren J. Shinn with a deadly weapon with intent to kill Buren J. Shinn, and inflicted serious injury on Buren J. Shinn within a minute or so after shooting the deceased, and that this other crime was included in the same course of conduct in which the killing of Buren Wayne Shinn was also a part, you would find this aggravating circumstance and so indicate by having your foreman write yes in the space after this aggravating circumstance on the Issues and Recommendation form. If you do not find or if you have a reasonable doubt as to one or more of these things, you would not find this

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aggravating circumstance, and would indicate by having your foreman write no in that space. If you unanimously find from the evidence beyond a reasonable doubt that one or more of these aggravating circumstances existed and have so indicated by writing yes in the space after one or more of them on the Issues and Recommendation form, you would answer issue number one, yes. If you do not unanimously find from the evidence beyond a reasonable doubt that at least one of these aggravated circumstances existed and if you have so indicated by writing no in the space after every one of them on that form, you would answer issue number one, no. If you answer issue number one, no, you would skip issues two, three and four and you must recommend that the Defendant be sentenced to life imprisonment. If you answer issue number one, yes, then you will consider issue number two. Members of the jury, issue number two reads do you unanimously find beyond a reasonsable doubt that the aggravating circumstance or circumstances found by you are sufficiently substantial to cause the imposition of the death penalty. Substantial means having substance and weight, importance, signficiant or momentum. Aggravating circumstances may exist in a particular case and still not be sufficiently substantial to call for the death penalty. Therefore, it is not enough for the State to prove from the evidence beyond a reasonable doubt the existence of one or more aggravating circumstances. It must also prove beyond a reasonable doubt

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that such aggravating circumstances are sufficiently substantial to call for the death penalty. Before you may answer issue two yes, you must agree unanimously that they are. If you unanmously find beyond a reasonable doubt that any aggravating circumstance or circumstances found by you are sufficiently substantial to call for the death penalty, you would answer issue number two, yes. If you do not so find or if you have a reasonable doubt, you would answer issue number two, no. If you answer number two, no, you would then skip issues three and four and you must recommend that the Defendant be sentednced to life imprisonment. If you answer number two, yes, then you will consider issue number three. Issue three is, do you find one or more mitigating circumstances. Possible mitigating circumstances are listed on the form and you should consider each of them before answering issue three. Mitigating circumstance is a fact or group of facts that do not constitute a justification or excuse for a killing or reduce it to a lesser degree of crime than first degree murder but which may be considered as extenuating or reducing the moral culpability of the killing or making it less deserving of the supreme punishment other -- than other first degree murders. Our law identifies several possible mitigating circumstances. However, in considering issue number three, it would be your duty to consider as a mitigating circumstance any of the circumstances of this murder that the Defendant contends is a basis for

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sentence less than death and any other circumstances arising from the evidence which you deem to have mitigating value. A Defendant has the burdern of persuading you that a given mitigating circumstance exists. The existence of any mitigating circumstance must be established by a preponderance of the evidence, that is, the evidence taken as a whole must satisfy you not beyond a reasonable doubt, but simply satisfied you that any mitigating circumstance exists. If the evidence satisfies you that a mitigating circumstance exists, you would find that cirumstance. If not, you would not find it. In either event, you would move on to consider the other mitigating circumstances and continue in like manner until you have considfered all the mitigating circumstances listed on the form and any others which you deem to have mitigating value. It is your duty to consider the following mitigating circumstances and any others which you find from the evidence. First, consider whether David Lawson has no significant history of prior criminal activities, significant means important or notable. Whether any history of any prior criminal activity is signfificant is for you to determine from all of the facts and circumstances which you find from the evidence. However, you should not determine whether it is significant only on the basis of the number of convictions, if any, in the Defendant's record. Rather, you should consider the nature and quality of the Defendant's history in determining whether

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it is significant. You will find this mitigating circumstance if you find that David Lawson has been convicted of two cases of breaking aand entering in Stanly County and this is not -- it is not a sigificant history of prior criminal activities. Second, you should consider whether David Lawson testified truthfully on behalf of the prosecution or another prosecution of a felony. A Defendant does so if he is called as a witness for the State at any stage of the prosecution of any felony and truthfully answers any questions asked by the prosecutor. The felony need not be connected with the murder for which you are recommending punishment. Breaking or entering is a felony. You would consider this mitigating circumstance or you would find this mitigating circumstance because there is no evidence to the contrary and the State stipulates that the Defendant, in fact, testified truthfully for the prosecutio in Stanly County at an earlier time. Third and finally, you may consider any other circumstance or circumstances arising from the evidence which you deem to have mitigating value and any aspect of the Defendant's character or reputation or record or any of the circumstances of this murder which is the basis for a sentence less than death. If you find one or more of these mitigating circumstances from the evidence, you would answer issue number three, yes. The Court directs you that you shall issue issue number three, yes, because of the stipulation as to the fact that the Defendant, in fact,

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testify in the prosecution of a felony in Stanly County at an earlier time. You must now consider issue number four. Issue numer four is do you find unanimously beyond a reasonable doubt that the aggravating circumstance or circumstances found by you outweigg any mitigating circumstance or circumstances found by you. If you find from the evidence one or more mitigating circumstances, you must weigh the aggravatin circumstances against the mitigating circumstances. In so doing, you are the sole judges of the weight to be given to any individual circumtance whbich you find, whether aggravating or mitigating. Your weighing should not consist of merely adding up the number of aggravating circumstances and mitigating circumstances. Rather, you must decide from all the evidence what value to give to each circumstance and then weigh the aggravating circumstances against the mitigating circumstances so valued and finally determine whether the aggravating circumstances outweigh the mitigating circumstances. If you unanimously find beyond a reasonable doubt that the aggravating circumstances found by you outweigh the mitigating circumstances found by you, you would answer issue four, yes. If you do not so find or have a reasonable doubt as to whether they do, you would answer issue four, no. If you answer issue four, no, it would be your duty to recommend that the Defendant be sentenced to life imprisonment. If you answer issue four, yes, it would be your

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duty to recommend that the Defendant be sentenced to death. Now, members of the jury, you have heard the evidence, the arguments of counsel for the State and the Defendant. The Court has not summarized all of the evidence, but it is your duty to remember all of the evidence whether it has been called to your attention or not. If your recollection of the evidence differs from that of the Court or of the District Attorney or of the defense attorney, you are to rely solely upon your own recollection of the evidence in your deliberatio I have not reviewed the contentions of the State or of the Defendant. But, it is your duty not only to consider all of t evidence, but to consider all the arguments, the contentions, and positions urged by the State's attorneys and the Defendant's aattorneys in their speeches and any other contentions that arises from the evidence and to weigh them in the light of your common sense and to make your recommendation as to punishment. The law, as indeed it should, requires the presiding Judge to be impartial. You are not to draw any inference from any ruling I,have made or any inflection in my voice or any expression on my face or any question I may have asked the witness or anything else I may have said or done during this trial. That I have an opinion or may have intimated an opinion as to whether any part of the evidence should be believed or disbelieved, as to whether any aggravating or mitigating circumstance has been proved

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disproved or as to what your recommendation ought to be. It is your exclusive province to find the true facts of this case and to make a recommendation reflecting the truth as you find it to be. When you are ready to make a recommendation, have your foreman write in your recommendation as directed on the issues and recommendation form. Any further requests for instructions by the State?

MR. BOWERS: No, Your Honor.

THE COURT: Any further request for instructions by the Defendant?

MR. JOHNSON: No, Your Honor.

THE COURT: Members of the jury, the bailiff will hand to you this paper writing which is exactly like the one you have before you that I have gone over with you that is written there in pencil, original. This is the form you will use in your deliberation and the one upon which you will put your answer or answers. When you go to the jury room, I suggest the first thing you do when you go there is select from among your number one to be your foreman and to lead you in your deliberations and to also be your spokesman for you when you return to open court. When you all agree on your recommendation and are ready to deliver it, have your foreman date and sign this form, notify the bailiff and you will be returned to open court to deliver your recommendation. The two alternate jurors may at this time -- the -- just a moment --

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the twelve of you, is there anyone of you who are sick or are unable to continue, of the original twelve? If not, the two alternate jurors may at this time step aside and have a seat right over here. Retire and say how you find.

(Jury retires -- 4:20 P.M.)

(Jury indicates decision -- 4:55 P.M.)

THE COURT:' Now, I have no idea what the verdict is going to be anymore than you do. If there is anyone in the courtroom who is unable to sit here without becoming too emotional or without making some kind of gestures or noise or things of this natur, when the jury verdict comes in, and you -- then you have the right to leave the courtroom at this time. So, I will not have a mockery made of my court. If you cannot contain yourself, you have a right to leave at this time. All right, sheriff, bring the jury in.

(Jury enters courtroom)

THE COURT: Mr. Riggs, are you the foreman?

MR. EARL EUGENE RIGGS: Yes, sir.

THE COURT: Would you stand, please. Mr. Riggs, has the jury agreed upon a verdict?

MR. EARL EUGNE RIGGS: Yes, sir.

THE COURT: Would you fold that verdict form and give it to the bailiff, please, and remain standing. Members of the jury, please stand.

(Jurors stand)

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APPENDIX F

STATE OF NORTH CAROLINA

CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

No. 80 CRS 18307

STATE OF NORTH CAROLINA)
)
Plaintiff)
)
vs.)
)
DAVID LAWSON)
)
Defendant.)

ISSUES AND RECOMMENDATION AS TO PUNISHMENT

ISSUES

Issue One:

Do you unanimously find from the evidence, beyond a reasonable doubt, that one or more of the following aggravating circumstances existed at the time of the commission of this murder?

ANSWER yes

BEFORE YOU ANSWER ISSUE ONE, CONSIDER EACH OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES. IN THE SPACE AFTER EACH AGGRAVATING CIRCUMSTANCE, WRITE "YES," IF YOU UNANIMOUSLY FIND THAT AGGRAVATING CIRCUMSTANCE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT. WRITE, "NO," IF YOU DO NOT FIND THAT AGGRAVATING CIRCUMSTANCE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT.

IF YOU WRITE, "YES," IN ONE OR MORE OF THE SPACES AFTER THE FOLLOWING AGGRAVATING CIRCUMSTANCES, WRITE, "YES," IN THE SPACE AFTER ISSUE ONE AS WELL. IF YOU WRITE, "NO," IN ALL OF THE SPACES AFTER THE FOLLOWING AGGRAVATING CIRCUMSTANCES WRITE "NO," IN THE SPACE AFTER ISSUE ONE.

(1) Was this murder committed for the purpose of avoiding a lawful arrest?

ANSWER yes

(2) Was this murder part of a course of conduct in which David Lawson engaged and did that course of conduct include the commission by the defendant of other crimes of violence against other persons?

ANSWER yes

IF YOU ANSWERED ISSUE ONE "NO," SKIP ISSUES TWO, THREE AND FOUR, AND INDICATE LIFE IMPRISONMENT UNDER " RECOMMENDATION AS TO PUNISHMENT", ON THE LAST PAGE OF THIS FORM. IF YOU ANSWERED ISSUE ONE, "YES," PROCEED TO ISSUE TWO.

Issue Two:

Do you unanimously find beyond a reasonable doubt that the aggravating circumstance or circumstances found by you are sufficiently substantial to call for the imposition of the death penalty?

ANSWER yes

IF YOU ANSWER ISSUE TWO, "NO," SKIP ISSUES THREE AND FOUR, AND INDICATE LIFE IMPRISONMENT UNDER " RECOMMENDATION AS TO PUNISHMENT" ON THE LAST PAGE OF THIS FORM. IF YOU ANSWER ISSUE TWO "YES," PROCEED TO ISSUE THREE.

Issue Three:

Do you find one or more mitigating circumstances?

ANSWER yes

BEFORE YOU ANSWER ISSUE THREE, CONSIDER EACH OF THE FOLLOWING MITIGATING CIRCUMSTANCES. YOU NEED NOT INDICATE ON THIS FORM WHICH MITIGATING CIRCUMSTANCES YOU DO OR DO NOT FIND.

IF YOU FIND ONE OR MORE OF THE MITIGATING CIRCUMSTANCES FROM THE EVIDENCE WRITE, "YES," IN THE SPACE AFTER ISSUE THREE, ABOVE. IF YOU DO NOT FIND ANY MITIGATING CIRCUMSTANCES, WRITE, "NO," IN THAT SPACE.

(1) David Lawson has no significant history of prior criminal activity.

(2) The defendant testified truthfully on behalf of the prosecution in another prosecution of a felony.

(3) Any other circumstance or circumstances arising from the evidence which you the jury deem to have mitigating value.

ANSWER ISSUE FOUR WHETHER YOU ANSWERED ISSUE THREE, "YES" OR "NO."

Issue Four:

Do you unanimously find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances?

ANSWER yes

IF YOU ANSWER ISSUE FOUR, "NO," INDICATE LIFE IMPRISONMENT UNDER "RECOMMENDATION AS TO PUNISHMENT." IF YOU ANSWER ISSUE FOUR, "YES," INDICATE DEATH UNDER "RECOMMENDATION AS TO PUNISHMENT."

RECOMMENDATION AS TO PUNISHMENT

INDICATE YOUR RECOMMENDATION AS TO PUNISHMENT BY WRITING "LIFE IMPRISONMENT" OR "DEATH," IN THE BLANK IN THE FOLLOWING SENTENCE:

We, the jury, unanimously recommend that the defendant, David Lawson be sentenced to death.

This 6 day of June, 1981.

Earl Riggs
Foreman of the Jury

Reply Brief unable to locate at time of filming